

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

NORTHERN NATURAL GAS COMPANY,

Plaintiff,

v.

Case No. _____

TNT CONSTRUCTION/KERKHOFF, INC.,
d/b/a TNT CONSTRUCTION,

Defendant.

COMPLAINT

Plaintiff Northern Natural Gas Company, for its Complaint against the above-named Defendant, states as follows:

1. Plaintiff Northern Natural Gas Company ("Northern") is a corporation organized under the laws of the State of Delaware with its principal place of business at 1111 South 103rd Street, Omaha, Nebraska. Northern is a citizen of Nebraska and is not a citizen of Minnesota. Northern is engaged in the business of the interstate transportation and storage of natural gas. Northern transports natural gas through Minnesota in underground pipelines.

2. Defendant TNT Construction Company/Kerkhoff, Inc. ("TNT") is a Minnesota corporation with its principal place of business at 912 Front Street West, Morgan, Minnesota. TNT is a citizen of Minnesota and is not a citizen of Nebraska.

TNT is a construction company engaged in the business of laying drain tile across agricultural property, and as such, is an excavator.

3. The amount in controversy exceeds \$75,000 (Seventy-Five Thousand Dollars), exclusive of interest and costs.

4. This Court has jurisdiction in this action pursuant to 28 U.S.C. §1332(a)(1).

5. Northern is the owner and operator of an underground pipeline (the "Pipeline") that transits through Section 17, Township 109 North, Range 34, West, Brown County, Minnesota .

6. On April 29, 2011, TNT commenced laying drain tile in the above-referenced location without first ascertaining the location of Northern's Pipeline, even though Defendant knew or should have known that the Pipeline was located somewhere on the property where the tiling operation was taking place.

7. TNT failed to contact the Notification Center, referred to as the "Gopher State One Call" system, as required by MN Stat. §216D.04, Subd. 1, in order to ensure that Northern was given adequate notice of the intended excavation work, that is, the drain tiling operation, scheduled to take place in the vicinity of the Pipeline.

8. TNT was negligent in failing to ascertain the location of Northern's Pipeline in the area of the excavation work, and in failing to make a notification call to the Notification Center as required by law.

9. TNT's negligence resulted in a physical breach of the integrity of the Pipeline, causing the venting of natural gas into the atmosphere in a hazardous manner.

10. As a direct result of TNT's negligence Northern has been damaged in the amount of the costs and expenses incurred to repair the damaged Pipeline in a safe manner in compliance with industry standards and federal regulations, including the utilization of Northern's personnel and equipment and personnel and equipment of outside contractors on an emergency basis to make the needed repairs, as well as the loss of the gas vented into the atmosphere, all in an amount in excess of \$75,000 (Seventy-Five Thousand Dollars).

WHEREFORE, Plaintiff Northern Natural Gas Company seeks judgment against TNT Construction/Kerkhoff, Inc., d/b/a TNT Construction as follows:

- (a) Compensatory damages to be proven at trial in an amount in excess of \$75,000.00;
- (b) Costs, disbursements and attorney fees to the extent allowed by law; and
- (c) Such other and further relief as the Court may deem just and equitable.

Dated: November 28, 2011.

s/ Thomas F. Hutchinson
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